

# UNDERHILL PLANNING COMMISSION & DEVELOPMENT REVIEW BOARD

Wednesday, January 18, 2017 6:30 PM

## Minutes

**Planning Commissioners Present:** Chair Cynthia Seybolt, Pat Lamphere, Carolyn Gregson, David Edson, Irene Linde, Nancy Bergersen

**Development Review Board:** Chair Charlie Van Winkle, Penny Miller, Mark Green, Mark Hamelin, Matt Chapek, Karen McKnight

**Staff/Municipal Representatives Present:** Andrew Strniste, Planning Director; Kurt Johnson, Selectboard Member

[6:30] The Planning Commission and the Development Review Board convened at Underhill Town Hall at 6:30pm.

[6:43] Chair Van Winkle called the meeting to order.

[6:36] Chair Van Winkle started the meeting by explaining that the Development Review Board requested (DRB) the meeting with the Planning Commission to **discuss the issues that the DRB is running into in the Water Conservation District**. He provided an overview of a recent variance hearing that involved a property in Underhill Center. Chair Van Winkle continued to explain that variances are a mechanism that should be utilized on rare occurrences. He explained that the current zoning regulations are not consistent with the Town Plan when it comes to compact development in Underhill Center. As a result, he explained that the DRB is proposing an overlay district or a new zoning district. Board Member Hamelin explained that a village center includes very tight, dense development on small lots. He further supported Chair Van Winkle's argument that almost all of the buildings/lots in Underhill Center do not comply with the Water Conservation zoning district regulations. Chair Van Winkle added that the Underhill Center should also provide walkability.

[6:50] Chair Van Winkle explained that **half of the lots in the Water Conservation zoning district are nonconforming based on acreage alone**. Chair C. Seybolt asked how the creation of an overlay district and the creation of a village designation relate to one another. Commissioner Edson presented the idea of grandfathering all of the nonconforming lots in the Water Conservation district and creating regulations for those particular lots rather than creating an overlay district for only those lots in Underhill Center. Chair Van Winkle contended that Commissioners Edson's proposal was more likely spot zoning.

[7:02] Chair Van Winkle presented the PowerPoint slide on variances, explaining that most applicants fail to prove that they are not creating their own hardship. He reiterated that variances are supposed to be rare occurrences. Chair Van Winkle and Staff Member Strniste explained the maps in the PowerPoint presentation, and how the percentage of nonconforming lots increases as the radius from the center decreases. Afterward, Chair Van Winkle provided **information on how an overlay district will fix the issues**. He further explained that the DRB's current process in granting variances involves entering into a deliberative session which takes away transparency. Chair Van Winkle further explained that the proposed overlay district does not have to alter the district as it can either relax or strengthen some of the development regulations.

[7:13] Board Member Hamelin stated that a **sound strategic decision may be to apply for the village designation simultaneously with creating an overlay district** as the overlay district may be better received by the public. Board Member Green explained that an overlay district would also assist in the future development of increased density in Underhill Center.

[7:16] Chair C. Seybolt explained that the Center cannot currently increase in density due to the water/wastewater constraints. Chair Van Winkle rebutted Chair C. Seybolt's argument by **stating if there is an engineering solution, the Regulations should allow increased density**. He further contended that development should come to the road in a village center to conform with the historical patterns. Commissioner Edson echoed his earlier statement that those with nonconforming lots should not have to be restricted as well.

[7:18] Board Member Hamelin stated that he is **not opposed to subdivision regulations being changed within Underhill Center**, and if the public is told about the incentives that came with a village designation, they may be more likely to approve another village zoning district.

[7:20] Chair C. Seybolt explained that the Planning Commission could not proceed with the Village designation because it had to be proposed by the Selectboard. Commissioner Gregson explained that **obtaining village designation for the center never occurred because there was no city water, an adjacent river was nearby, there was turnover on the Commission, and the Town was working towards implementing the new Town Plan**. Board Member Miller cautioned that introducing smaller lot sizes for Underhill Center could result in a similar outcome to when the idea was proposed for the Flats and subsequently defeated. She continued to state that the Planning Commission will need to seriously consider which restrictions they want to relax. Board Member Miller then stated that one of the reasons increased density failed in the flats was due to the perception that the transportation infrastructure could not handle the potential increase in the number of cars traveled. She further stated that aesthetics was also a sticking point, as people in the Flats were concerned that larger sized modern houses would be built next to smaller sized historic buildings. Chair C. Seybolt explained that if the Planning Commission were address aesthetics, any attempt to pass new regulations would fail. Board Member Miller explained that this was another reason to not altering the subdivision requirements for Underhill Centers.

[7:34] Chair C. Seybolt voiced her concern that the bylaw updates and an overlay district may not succeed if performed simultaneously with one another. Chair Van Winkle explained that **informative meetings will need to be performed, as well as providing constant communication**. Commissioner Gregson asked if the DRB had a preference for between the bylaw updates and the overlay district. Chair Van Winkle explained that the DRB would like to see both done, as being forced to go into a deliberative session is contrary to open meeting laws. He asked if clerical/technical changes could be performed without a vote. Commissioner Edson stated that he has sympathy for all 180+ lots that are nonconforming and would like to find a resolution for those properties outside Underhill Center as well.

[7:42] Staff Member Strniste provided an **explanation of the application requirements for the Village Designation process**. He further explained that there needs to be justification for the Village Designation boundaries.

[7:48] Chair C. Seybolt asked if the **Planning Commission was in support of promptly devising an overlay district for the Underhill Center**. All were in favor. She then asked if the **Planning Commission was in support of beginning the village center designation process**. All were in favor. Commissioner Edson stated that he would like to provide relief for all of the



nonconforming lots in the Water Conservation District. Chair C. Seybolt stated that there were nonconforming lots all over Town, and that the Commission could not address this issue. Board Members McKnight and Hamelin recommended getting village designation and implementing an overlay district simultaneously. Commissioner Edson agreed that all nonconforming lots could not be addressed since they exist throughout the entire Town. Chair Van Winkle clarified that the DRB does not disregard the Regulations; however, when an idea is proposed where the Regulations do not support an outcome that would benefit the community as a whole, they are forced to rely on the Town Plan. Board Member Chapek explained that the appeal period, as seen with the River Road variance, can extend a developer's timetable immensely.

[7:56] Board Member McKnight explained that after the Conservation Committee researched wetlands and setbacks, they wished to **withdraw their proposal to the Planning Commission asking for them to increase the Class III wetland setback requirements from 25 ft. to 50 ft.** Board Member McKnight explained that the State does not recognize setbacks for Class III wetlands. Commissioner Gregson explained that at one point, Class III wetlands were originally a concern if it was integral to an adjacent Class II wetland.

[8:00] Board Member McKnight also wanted the **Planning Commission to pay close attention to energy bonuses under Article IX of the Regulations.** Chair Van Winkle clarified that energy bonuses were part of PRD/PUD density bonuses allowed under Article IX of the Regulation, which allows the relaxation of density requirements. Commissioner Gregson explained that density bonuses are on the Planning Commission's agenda to address, and that this section was placed in the Regulations without the Planning Commission's understanding of them. Commissioner Lamphere explained that he and Commissioner Phillips were going to recommend removing density bonuses from the Regulations all together. He then asked the Development Review Board if an applicant has ever proposed a development utilizing density bonuses. The Board responded that there is an upcoming applicant proposing to use density bonuses.

[8:04] Board Member Miller began a discussion regarding **water/wastewater systems as approved with single-family residences.** She explained that when a single-family residence installs an accessory apartment, or another principal dwelling unit, the applicant will need to obtain an updated water/wastewater permit regardless if the number of bedrooms does not surpass the number of bedrooms allowed in the original permit. For example, a three-bedroom dwelling has a water/wastewater permit for four-bedrooms. If the applicant proposes the addition of a one-bedroom accessory apartment, the applicant will need to get an updated permit even though he or she is not exceeding four-bedrooms. Commissioner Edson also advised the Board and the Commission about construction permits (State permit) for accessory dwellings over 30%.

[8:06] Board Member Green stated that he recently read an article where the Vermont Supreme Court made a decision in favor of an applicant because the phrase **"compatible with current & historical use" in the zoning regulations were considered to be too vague.** He continued to state that this phrase was used in various locations of the Underhill Regulations.

[8:07] Board Member Miller also brought to the Planning Commission's attention that the Vermont **Public Service Board does not issue rulings based on zoning regulations, but rather, rely on Town Plans.** She and Chair Van Winkle stated that the Town Plan should state where they do or do not want to see solar power/wind power.

[8:13] Chair C. Seybolt asked if the **Development Review Board would send one member a month to the Planning Commission as a way to keep in constant communication between the two boards.** Chair Van Winkle stated that the Board would do so. Chair C. Seybolt stated that the

Planning Commission would try to get the bylaw updates done soon. Staff Member Strniste provided an overview of the bylaw update process.

[8:16] Chair C. Seybolt asked the **Planning Commission task groups to submit their research/recommendations to Staff Member Strniste in the coming days so he can make PowerPoint presentations for the Planning Commission**, which he thinks would be beneficial to help resolve issues.

[8:19] Both Boards moved to adjourn. Commissioner Bergersen moved to accept the motion, and Commissioner Edson seconded the motion. The motion passed unanimously.

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Respectfully Submitted By:  
Andrew Strniste, Planning Director

The minutes of the January 18, 2017 meeting were accepted this 22 day of Feb., 2017.

  
Cynthia Seybolt, Planning Commission Chair

 2/20/2017  
Charlie Van Winkle, Development Review Board Chair